



accident is not compensable under the Kansas Workers Compensation Act. Further, respondent and its insurance carrier, Pinnacol Assurance, argue there is no basis for personal jurisdiction over the insurance carrier and, therefore, Pinnacol Assurance should be dismissed with prejudice from all liability in this claim.

The only issue on this appeal is whether claimant's principal place of employment was within Kansas for purposes of the Kansas Workers Compensation Act.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and the parties' arguments, the Board finds and concludes the preliminary hearing Order should be reversed. At this juncture of the claim, claimant has failed to establish that Kansas was his principal place of employment while working for respondent.

Before an accident is compensable under the Kansas Workers Compensation Act, either the accident must have occurred within Kansas, the contract must have been formed within Kansas, or claimant's principal place of employment must be within Kansas. The pertinent statute, K.S.A. 44-506, provides, in part:

The workmen's compensation act shall not be construed to apply to business or employment which, according to law, is so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged: *Provided*, That the workmen's compensation act shall apply also to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides . . .

The parties agree claimant's accident occurred in Colorado. Claimant does not contest the Judge's finding that claimant's contract of employment with respondent was formed in Colorado. Moreover, the facts do not prove that claimant's principal place of employment was within Kansas.

Although he was employed by a Colorado trucking company as an over-the-road driver, claimant resided in Wichita, Kansas. Claimant would sometimes be dispatched from Wichita, if he happened to be at home. On the other hand, claimant would receive dispatches when he was on the road, which, according to claimant, included the 48 contiguous states. Although claimant drove in and through Kansas, there is nothing in the record which would indicate Kansas was the primary or chief area where claimant worked or which would indicate that claimant performed a considerable or significant amount of work within Kansas. Other than claimant's residence, there is nothing about Kansas that has any special significance or relationship to claimant's employment. Accordingly, the

Board is unable to conclude that claimant's principal place of employment was within Kansas.

As claimant has failed to establish there is jurisdiction under the Kansas Workers Compensation Act, claimant's request for benefits should be denied.

Respondent and its insurance carrier attached to their brief to the Board a copy of the July 2, 2002 Preliminary Hearing transcript and a copy of John R. Eisenman's July 25, 2002 deposition. Mr. Eisenman's deposition is not part of the record for this appeal as it was not part of the record considered by the Judge. See K.S.A. 44-555c, which provides that Board review shall be based upon the evidence presented to the Judge. Also, for future reference, copies of transcripts should not be attached as exhibits to the briefs as the Board obtains the entire record from the administrative law judges before deciding the issues on appeal.

**WHEREFORE**, the Board reverses the July 2, 2002 preliminary hearing Order and denies claimant's request for benefits.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 2002.

---

BOARD MEMBER

c: Brian D. Pistotnik, Attorney for Claimant  
J. Sean Dumm, Attorney for Respondent and its Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge  
Director, Division of Workers Compensation